IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 6859 of 2007

Date of decision 6. 8 .2007

M/s Osaw Agro Industries Pvt. Ltd. .. petitioner

Versus

State of Punjab and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr.Avneeh Jhingan, Advocate for the petitioner

Mr.Salil Sagar Addl.AG Punjab

M.M.Kumar, J.

The highhandedness of certain officers at the Information Communication Center and their indulgence in unlawful activities has driven the petitioner to this Court by filing the instant petition under Article 226 of the Constitution with a prayer for quashing notice dated 2.5.2007 (Annexure P.4) and any proceedings initiated in pursuance thereto. As an interim measure a direction has been sought to the respondents to release the goods and the truck.

Brief facts of the case are that the petitioner is a registered dealer under the Haryana Value Added Tax Act, 2003 (for brevity 'the Haryana VAT Act') and under the Central Sales Tax Act, 1956 (for brevity

'the CST Act'). The petitioner has its factory at Agrosaw Complex, Jagadhri Road, Ambala Cantt. and is engaged in the business of manufacture and trading of Seed Cleaning and Grading Machines. The petitioner sent a quotation on 20.3.2007 (Annexure P.1) to the Punjab Agriculture University, Ludhiana with regard to supply of Agrosaw Specific Gravity Separator, Model G I. Apart from other things, the price of the product was mentioned to be FOR Destination. The University vide its letter dated 29.3.2007 (Annexure P.2) accepted the price quoted by the petitioner and asked for supply of the machine. Accordingly, the petitioner sold the machine to the University vide invoice/ bill dated 1.5.2007 (Annexure P.3) and in pursuance to Section 3 of the CST Act, the petitioner paid Central Sales Tax @ 4% as the sale was inter-state transaction. This fact is evident from the invoice dated 1.5.2007 (Annexure P.3). Accordingly, the goods were loaded in truck No. HR 07GA 0118 for delivery from Ambala to Ludhiana. When the truck loaded with goods reached ICC Shambhu (Import) barrier the agent of the petitioner produced documents for giving information and for obtaining form ST XXIV-A by generating the same from ICC. However, the goods and the truck were detained by the Excise and Taxation Officer cum Detaining Officer and notice dated 2.5.2007 (Annexure P.4) was issued. It was alleged by respondent no. 2 that the petitioner since is not registered under the Punjab Value Added Tax Act, 2005 (for brevity 'the Punjab VAT Act') and, therefore, has violated Section 21(1) thereof. It was also claimed that the petitioner was required to place on record proof of payment by the Punjab Agriculture University in advance. The petitioner through its Manager (Finance) appeared before respondent no.2 namely Shri S.S. Bangar, ETO alongwith reply and relevant

documents (Annexure P.5). The transaction was explained to the Excise and Taxation Officer that it was inter-state sale and Central Sales Tax has been charged as per law. It was further pointed out that the petitioner is a registered dealer in Haryana and the Punjab Agriculture University, Ludhiana has not purchased the goods for trading. Therefore, it was urged that no violation of Section 21 (1) of the Punjab VAT Act would emerge as the petitioner was not under any obligation to get it registered in Punjab. It was also claimed that the petitioner was not liable to pay any tax to the State of Punjab under the Punjab VAT Act. The goods were not even released against bank guarantee. The order has been challenged on the ground that it is beyond jurisdiction as envisaged by Section 51 of the Punjab VAT Act which is confined to cases when any one attempt to evade tax due under the Punjab VAT Act in respect of goods in transaction. It also requires to examine the documents. It has been alleged that the ETO has employed various tactics to harass the dealers who comes from outside Punjab because in order to get the goods released such dealers have to furnish bank guarantee.

When the matter came up for consideration on 8.5.2007, this Court directed that the goods alongwith the vehicles be released to the petitioner on furnishing of bank guarantee to the satisfaction of the Detaining Officer and that the bank guarantee was not to be encashed till further orders. The writ petition was taken up for consideration on 15.5.2007 when the learned State Counsel apprised the Court that the goods alongwith the vehicle were released on furnishing of bank guarantee which has not been encashed. He also undertook that no further orders would be passed under Section 51 of the Punjab VAT Act.

The respondents in their joint reply filed through Shri S.S. Bangar, Excise and Taxation Officer has taken the stand that the petitioner has violated Sections 21(1) and 6(3)(a)(i) of the Punjab VAT Act which has been enforced to enhance the government revenue by plugging evasion of sales tax. It is alleged that the goods were meant for trade and the petitioner has been carrying business on FOR basis in Punjab without registration TIN (Tax Index Number). On merits, in para 3 the respondents have claimed that the sale is not inter-state sale but local sale. At the time of detention, the petitioner was still to complete the delivery of goods as it was on FOR basis. The payment of the goods was not received from the consumer. Hence, the goods were not owned by the Punjab Agriculture University. The petitioner was yet to sell the goods in Punjab and to receive the payment in Punjab itself. On the basis of the afore-mentioned features, it has been claimed that the petitioner has to be regarded as a dealer in Punjab and therefore registrable in Punjab. He is liable to pay CST in Ambala as well as in Punjab.

Mr. Avineesh Jhingan, learned counsel for the petitioner has argued that the sale made by the petitioner has to be necessarily regarded as inter-state sale for the purposes of Section 3 of the CST Act. According to the learned counsel, the sale can be an inter-state sale even if the contract of sale does not provide for movement of goods from one State to another but such movement is the result of any incident of that contract. He has further pointed out that the nature of the sale as to whether it is inter-state or intra state sale does not depend on the circumstances as to in which State the property in the goods passes to the purchaser. It may pass to the purchaser in either of the State yet the sale could be an inter-state sale. In support of

his submission, learned counsel has placed reliance on a judgement of Hon'ble the Supreme Court in the case of Union of India v.K.G. Khosla and Co. (1979) 43 STC 457. Learned counsel has then contended that there was no justifiable reason for the Detaining Officer to detain the goods at ICC Shambhu Barrier and infact the detention of goods smacks of mala-fide. He has alleged that even in earlier cases, the same Excise and Taxation Officer has not been spoken of very well by this Court. In that regard, he has drawn our attention to the observations made by two Division Benches of this Court in the cases of Varinder Kumar and Co. v. State of Punjab (2000) 16 PHT 486 and M/s Rachna Steel Corporation v. State of Punjab (2000)15 PHT 460.

Mr. Salil Sagar, learned State counsel has made an attempt to support the impugned order by urging that it was an FOR sale and no document showing payment of price of the goods was produced. He has further suggested that the dealers who are carrying on FOR business in Punjab are required to have registration TIN and in the absence thereof it would be presumed that the goods were meant for trade. Learned State counsel does not find any illegality in the order.

Having heard the learned counsel for the parties at a considerable length we are of the view that this petition deserves acceptance and the impugned notice dated 2.5.2007 (Annexure P.4) is liable to be quashed. It would first be appropriate to read S. 3 of the CST Act which reads as under:

> " 3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.- A sale or purchase of goods shall be deemed to take place in

the course of inter-State trade or commerce if the sale or purchase-

a)occasions the movement of goods from one State to another; or

b) is effected by a transfer of documents of title to the goods during their movement from one State to another."

The afore-mentioned provision came up for consideration of Hon'ble the Supreme Court in K.G.Khosla's case (supra). Their Lordships have interpreted Section 3 of the CST Act and held that it has three features which are summed up by the apex Court as under:

" Held, (i) that if a contract of a sale contains a stipulation for the movement of the goods from one State to another, the sale would certainly be an inter-State sale. But for the purposes of Section3(a) of the Act is not necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale. A sale can be an inter-State sale, even if the contract of sale does not itself provide for the movement of goods from one State to another but such movement is the result of a covenant in the contract of sale or is an incident of that contract;

ii)that goods conforming to agreed specifications having been manufactured at Faridabad, the contracts of sale could be performed by respondent only by the movement of the goods from Faridabad with the intention of delivering them to the purchasers. Although the contracts of sale did not require or

provide that the goods should be moved from Faridabad to Delhi, the movement of the goods was occasioned from Faridabad to Delhi as a result of incident of the contracts of sale made in Delhi. The High Court was, therefore, right in holding that the sales were inter-State sales and that the turnover of such sales was assessable to sales tax under the Central Act by the sales tax authorities of Faridabad.

The question as regards the nature of the sale, that is, whether it is an inter-State or an intra-State sale, does not depend upon the circumstance as to in which State the property in the goods passes. It may pass in either State and yet the sale can be an inter-State sale."

It is well settled that an inter-state sale must fulfill three essential ingredients as has been observed by a Constitution Bench of the Supreme Court in the case of State of Andhra Pradesh v. National Thermal Power Corporation Ltd. (2002) 5 SCC 203. In para 24, the afore-mentioned three essential ingredients have been elaborated which reads as under:

" i)there must be a contract of sale, incorporating a stipulation, express or implied, regarding inter-State movement of goods;

ii) the goods must actually move from one State to another, pursuant to such contract of sale, the sale being the proximate cause of movement; and

iii)such movement of goods must be from one State to another State where the sale concludes. It follows as a necessary corollary of these principles that a movement of goods which may take place independently of a contract of sale would not

fall within the meaning of inter-State sale."

The first ingredient that the contract of sale must have stipulation regarding movement of goods is evident from the reading of the letter of acceptance dated 29.3.2007 (Annexure P.2) sent by the Punjab Agriculture University, Ludhiana that the payment of the machine shall be made on delivery of equipment in the Department of Food Science and Engineering, Punjab Agriculture University, Ludhiana. It is further supported by invoice/ bill dated 1.5.2007 showing the movement of goods from Ambala to Punjab Agriculture University, Ludhiana. A perusal of the bill shows that the petitioner has added sales tax @ 4% in pursuance to the provisions of Section 3(1) of the CST Act by treating the same as inter-state sale. The second ingredient is also evident that the goods have moved from the State of Haryana to State of Punjab in pursuance to the contract of sale as evidenced by letter of acceptance. It is no body's case that the sale was proximate cause of the movement of goods and the third element is also fulfilled because the sale has been concluded in the State of Punjab at Ludhiana in pursuance to the movement of goods from Haryana.

Accordingly, it has to be held that all the ingredients of inter-state sale stands fulfilled in the present case and the sale in question has to be so held. The view is also supported by the judgement in the case of K.G.Khosla and Co.'s case (supra). We find no substance in the argument that the petitioner is also required to register itself under the Punjab VAT Act failing which he would be violating the provisions of Section 21 of the Act. A similar argument in respect of sale of electricity was raised before a Constitution Bench in the case of National Power Thermal Corporation's case (supra) and the same was

rejected with the observations in para 32, which reads as under:

> " Moreover, if the reasoning suggested by the States of A.P. and M.P. was accepted, the State where the dealer supplying the electricity is located and the electricity originates for sale, as also the States in which the purchaser of electricity is located and it is delivered, shall both subject the electrical energy to taxation, by relying on the theory of territorial nexus. Such multiple taxation would result in hampering free movement of electricity between the States and, therefore, would be prejudicial to freedom of trade, commerce and intercourse throughout the territory of India, and for the unity and integrity of the country. That would give rise to the same situation which was sought to be remedied by the Constitution and the Sixth Amendment."

When the principles laid down by their Lordships of Hon'ble the Supreme Court are applied to the facts of the present case it has to be held that multiple taxation as claimed by the respondents would result in hampering the free movement of goods between the States as provided by Article 301 of the Constitution and therefore would be prejudicial to freedom of trade , commerce and intercourse throughout the territory of India, and for the unity and integrity of the country. Therefore, we find that the petitioner has not violated Section 21 of the Punjab VAT Act as has been claimed by the respondents.

For the reasons stated above, this petition succeeds. The notice dated 2.5.2007 (Annexure P.4) is quashed and respondents are

saddled with costs of Rs.10,000/- which initially shall be paid by the respondent-State to the petitioner. In view of the fact that Excise and Taxation Officer, respondent no.2 is not impleaded in person we direct the respondent-State to hold an enquiry and the costs of Rs.10,000/- be recovered personally from the officer who may be found guilty for having committed the lapse of detaining the goods. The enquiry shall be undertaken without any loss of time and can be completed within a period of two months from the date of receipt of certified copy of this order. It is needless to observe that the bank guarantee furnished by the petitioner shall be released immediately.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

6.8.2007
okg